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In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 590

ROBERT JAYSON, WILLIAM K. JAYSON, JENNIE JAYSON,
Petitioners,

v.

THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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The petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Claims entered as reported in that Court No. 332-66, and order of that court in overruling petitioners' motion to set aside summary judgment under Rule 69(b) of the Court, entered June 14, 1968.

OPINIONS BELOW

In *Jayson v. United States*, 294 F. 2d 808 (5th Cir. 1961) the judgment of the United States District Court

for the Northern District of Texas, Dallas Division, in Civil Action No. 8072, United States of America, plaintiff, v. Certain Land in the City and County of Dallas, State of Texas, and O. E. Padgitt, et al., was affirmed.

In Robert Jayson, et al., appellants, v. Lawson B. Knott, individually, appellee, No. 19,768, Civil 1751-65, in the United States Court of Appeals for the District of Columbia Circuit, September Term, 1965, the judgment of the United States District Court for the District of Columbia dismissing the suit was affirmed, denying appellants relief.

JURISDICTION

The jurisdiction of this court is invoked under 28 USCA 1255(a).

QUESTION PRESENTED

Whether private citizens by conspiracy, collusion and fraud with an agency of the United States Government can with impunity violate United States statutes and the United States Constitution, and then by artful design deprive other citizens of their property without any due process of law?

CONSTITUTIONAL PROVISIONS

This petition involves Amendment V, "nor be deprived of life, liberty, or property, without due process of law;" of the Constitution of the United States.

STATUTES INVOLVED

United States Code, Title 40, Sections 257, 258(a), 298(a), 352; 69 Statutes 458, 72 Statutes 1066; Section

101 of Public Law 519, 83rd Congress, and Title 1 of Public Law 519, 83rd Congress.

STATEMENT

1. The petitioners are individuals and residents of the city and county of Dallas in the State of Texas.

2. (Note: Exhibits referred to under this Statement are all in the petition in the United States Court of Claims.)

3. Prior to January, 1957 the petitioners had acquired by purchase the fee simple title to improved real property in Dallas County, Texas known as 1021 Commerce Street, Dallas, Texas and described as Lot 6, Block 63 in Original City of Dallas, containing 10,000 square feet of land, for a consideration of $200,000.00.

4. This Lot 6 has commercial improvements, being a five story brick building with a basement. The building contains 65,000 square feet of floor space, including a balcony over the first floor with 5,000 square feet. Approximately $180,000.00 in improvements were made to the building by petitioners including airconditioning, new elevators, new electrical wiring and plumbing, new flooring and ceilings. Part of this space was occupied by petitioners but most was lessee occupied or available for leasing.

5. Prior to 1957 a group of powerful real estate promoters had formed a syndicate and were acquiring entire blocks in the area adjoining Block 63 at an estimated value of $60,000,000.00 and continued their acquisitions by an es-

the submission of proposals Site Acquisition, with special reference to the first two paragraphs.

9. The syndicate violated the prohibition against modifying proposals after the time for bid opening as stated in Exhibit "C" by summitting a letter of guaranty dated December 24, 1957 to

Colonel Karl E. Wallace
Regional Commissioner
General Services Administration
1114 Commerce Street
Dallas 2, Texas

a copy of which letter of guaranty is attached as Exhibit "D", and in which the syndicate guarantees the defendent from having to expend more than one million ($1,000,000.00) dollars in acquisition of the land, including that of petitioners, and limiting the amount defendant shall pay for each lot in Block 63 without the prior approval of the guarantors. The syndicate thereby placed a ceiling upon the value and price of petitioners' land and offered it for sale without ever having communicated with the petitioners, nor did the syndicate ever have any authority to act for the petitioners in offering their property for sale or to place a value thereon. In the absence of any authority as petitioners' agents or representatives, the syndicate impaired petitioners' rights by exerting undue influence upon the defendant to acquire Block 63, including Lot 6 of petitioners, by unlawful means and without due process.

10. Exhibit "D" violates the statute, USCA, Title 40, Section 298a, in that the guaranty stated in Exhibit "D"

timated value of $14,000,000.00. Block 63 includes 1114 Commerce Street which is the present existing property for offices of the defendant in Dallas, Texas other than the Post Office and the Terminal Annex.

6. In January, 1957 the defendant, through the General Services Administration, published an Advertisement For Federal Building Site, GS-1058, a copy attached as Exhibit "A". This advertisement defined the boundaries of the area within which the site would be selected upon the bid opening at 2:00 P.M. CST on January 24, 1957, Exhibit "E".

7. The invitation for bids, Exhibit "A", contained the following provision:

> "Owners may submit their own proposals. Proposals submitted by agents must be accompanied by documentary evidence of authority."

8. Prior to the bid opening the syndicate had been in conference with the defendant through the General Services Administration, which is evidenced by their admission in the proposal dated January 23, 1957, a copy of which is attached as Exhibit "B", page 2 thereof;

> "These advantages have been brought out in greater detail in a formal brochure previously presented to you, a copy of which is attached hereto and made a part hereof."

The proposal as submitted, Exhibit "B", on GSA Form 105 did not comply with the statutes or regulations governing such matters, as set out in Exhibit "C". Instructions for

is conditional, in that it provided that the syndicate would contribute funds to the defendant *only if* a designated property was taken for the Federal Building. The syndicate, under this guaranty, allegedly paid the defendant $524,000, which was conditional and designed to influence, encourage and induce the defendant to take specific property owned by petitioners and others not members of the syndicate.

11. At the bid opening by defendant on January 24, 1957 only the proposal submitted by the syndicate was considered and accepted, although, according to petitioners' information and belief, the Regional Office of the General Services Administration acting for defendant, had indicated an earlier preference for a site several blocks East of that proposed by the syndicate and out of the area in which the syndicate was investing.

12. Subsequent to the bid acceptance of the proposal of the syndicate, Exhibit "B", the defendant instituted condemnation proceedings against the petitioners' property and that of the other owners in Block 63, excepting Lot 7, adjoining Lot 6 of petitioners. This part of Block 63 joins 1114 Commerce Street on the West. The syndicate by Exhibit "B" and "D" had made a guaranty of cost to the defendant upon property over which it had no legitimate control or authority and caused appraisals to be placed upon the property based upon fictitious low values, and petitioners here and now

serve notice upon defendant to produce any and all appraisals relating to the acquisition of the lots in Block 63 and especially those upon Lot 6.

13. In the condemnation proceedings in Civil Action No. 8072, United States of America v. Certain Land, In the City of Dallas, Dallas County, State of Texas, O. E. Padgitt, et al., in the United States District Court for the Northern District of Texas, Dallas Division, petitioners were named defendants.

14. *In Civil Action No. 8072, the issues were limited to the amount of compensation under condemnation.* The trial court summarily and arbitrarily disposed of all questions relating to the inducement of the defendant herein by the syndicate to get defendant to select the site on Block 63. The petitioners were awarded a total sum of $380,000.00 by the court upon a jury verdict, from which petitioners' had to pay the sum of $40,000.00 to lessees of petitioners' lessees for cancellation of leases caused by the syndicate. Appeal was taken from this judgment to the United States Court of Appeals for the Fifth Circuit in No. 18604, Robert Jayson, et al., Appellants v. United States of America, Appellee, which court affirmed the judgment of the trial court on October 13, 1961. As the trial court had limited the issues to the compensation under condemnation the issues relating to the inducement to the defendant in selecting this site

and the violation of "due process" have never been decided. Further, petitioners did not learn of the actions of the syndicate in the negotiations with the defendant until after the proceedings were concluded in the above suit and appeal therefrom, during which petitioners were able to obtain copies of the Exhibits attached, but not from the syndicate or the Dallas office of the General Services Administration.

15. Hearings were held by Committees of Congress concerning the irregular manner of acquisition of the property in Block 63, but no definitive action was taken to correct the irregularities but the Committees would not approve the project or appropriate the funds for construction. This is recorded in the Congressional Record, Vol. 107, dated June 26, 1961 at pages 10417-10437, inclusive, in which repeated references are made to the serious irregularities in the manner defendant acquired the site, including petitioners' property.

16. Subsequent to the proceedings in Civil Action No. 8072 and the appeal from that judgment, petitioners caused to be instituted Civil Action No. 1751-65 in the United States District Court for the District of Columbia, petitioners v. Lawson B. Knott, individually, which was a petition for injunction against defendant using the site selected, with judgment for the defendant and affirmed on appeal.

REASONS FOR GRANTING THE WRIT

The compelling reason for granting the writ is to acknowledge the supreme law and justice thereunder according to esoteric Light.

Man's attempt to conform his conduct according to this cardinal principle is reflected in the provisions of the United States Constitution and the Statutes cited.

Appendix "A", being a transcript of pre-trial proceedings, in Civil No. 8072, In the District Court of the United States for the Northern District of Texas, Dallas Division, United States of America v. Certain Land In the City and County of Dallas, State of Texas, and O. E. Padgitt et al., on page 5 of which the court stated and held;

"All right. Now, here is what: I will take up the motion with respect to the oral deposition and interrogatories in this way. Now, there are three categories of questions in both oral depositions and the written interrogatories which are objected to, *and since this law suit is confined to the issue of just compensation, I am going to take up and rule on these categories as follows: The first group of interrogatories and the issues, questions that are intended in the depositions, are objected to of this category detail the factors which entered into the decision of the Administrator of the General Services to select this particular property as a public building site. That is category No. 1. I consider that as having never been committed to the Courts.* (Italics supplied).

On page 13 of the transcript;

> "THE COURT: You are not going to have any trouble because I excluded all transactions dealing with this property prior to the day we took it, and this declaration of taking was filed in toto except merely the contract and the names of the parties to it."

The above quoted language of the trial court is conclusive proof that the issue presented in this petition has never been judicially considered but summarily dismissed from consideration.

The contract referred to is the Site Proposal with Guaranty (Appendix "B") between the syndicate of private affluent investors and the General Services Administration, and the letter of inducement from the syndicate to the Regional Commissioner of the General Services Administration, (Appendix "C").

The judgment of the Court of Claims, Appendix D, the Order, Appendix E.

It was in violation of Title 40, USCA Section 298a, when the syndicate and the government, through the General Services Administration made the agreement that the syndicate would guarantee that certain land would cost no more than a stated amount, provided the following conditions were met as set by the syndicate;

(a) The Government had to select the site proposed.

(b) The Government was not permitted to pay more for the individual lots than specified amount without

receiving the prior approval of the guarantors' syndicate.

(c) If greater than the specified amounts were paid, the guarantors were privileged to appoint a committee of four to give approval or disapproval.

(d) The Government was required to purchase or institute condemnation proceedings within two years from December 24, 1957.

(e) Even the amount of the gift was conditioned on what the Government had to pay (leaving the guarantors in position to control this by various means at their disposal.)

Further, the payment of the $524,000.00 by the syndicate to the Government was an illegal payment in violation of the statutes and as admitted by the syndicate in their agreement, Appendix C, "in order to induce the United States of America to select and acquire the * * * described property as a site for a federal building, and in consideration of the selection and acquisition of said property for such purpose." Thus on its face, the payment was made to influence the Government to acquire a site which would benefit the syndicate who were owners of adjacent property worth approximately $14,000,000.00. The powers reserved by the syndicate to approve prices, terms, negotiations, appraisals, discussions with tenants, offers, threats and inducements, with or without the consent of the Government constitutes conspiracy, collusion and fraud upon the petitioners, in violation of the "due process of law" guarantee of the Constitution.

The recital of the facts setting out the background of this case, the unlawful relationship, conspiracy, collusion and fraud between the syndicate and the General Services Administration is a flagrant violation of the cited authority; then the preemptory manner in which the District Court summarily disposed of these vital facts was an arbitrary refusal to even consider or hear any evidence on these questions. The refusal of the trial court to even consider the issues raised in the transactions and relationship between the syndicate and the General Services Administration, and never considered or heard by any subsequent proceeding is not estoppel by judgment or res judicata, this doctrine being nothing more than a doctrine of public convenience to forestall a multiplicity of suits, but never to be applied to deny the administration of fundamental justice. Support for this conclusion is found in the case of National Lead Company v. Nulson, 131 F. 2d 51 (USCA-Eighth 1942) holding;

"Under Missouri and Federal law, where the demands are different, even though the parties are the same, a former judgment is not conclusive in a subsequent action of any fact not distinctly put in issue, litigated and directly determined in the former action and 'estoppel' in such case cannot extend beyond point actually litigated and determined.

The plea of res judicata is an 'affirmative defense' and the burden of proof rests on the party asserting it.

Under Missouri and Federal law, where causes of action are different, even when the parties are the same, former judgment is only conclusive of matters which were in fact litigated in the former action, and the former judgment is not conclusive of any fact not necessary to be proved in the former case." Another case, Nunnally Investment Co. v. United States, 36 F. Supp. 332 (Ct. Cl. 1941) holding;

"The doctrine of 'estoppel by judgment' or 'res judicata' proceeds upon the principle that one person shall not a second time litigate with the same person or with such another so identified in interest with such person that he represents *the same legal right, precisely the same question, particular controversy, or issue* which has been necessarily tried and finally determined upon the merits by a court of competent jurisdiction in a judgment in personam in a former suit." (Italics supplied)

The principle is again stated clearly in 32 ALR 2d 1135, "A particular matter or issue which is withdrawn or withheld from consideration of the court, either by stipulation of the parties or otherwise, is not adjudicated, and a judgment entered on other issues will not act as a bar to another action on the issue so withdrawn."

The trial court summarily dispatched all issues raised in this petition by in effect tightly packaging them under a seal then locking them in a dark sealed room without any hearing.

CONCLUSION

Petitioners respectfully pray that this petition for writ of certiorari be granted upon the facts and the law cited and that petitioners be granted all the relief to which they are entitled in equity and in law.

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